[continued from A20 of petitioner's appendix] ...something it valued because Mitsubishi was persuaded to follow Wang's design suggestions, but was led to believe the resultant SIMMs were not custom products for Wang and did not assess charges. Although Wang points to contrary evidence, we cannot reevaluate credibility or substitute our choices for those of the jury. Perkin-Elmer, 732 F.2d at 893, 221 USPQ at 672-73. Therefore, these findings survive the substantial evidence test.

With the findings of fact firmly in hand, we now turn to the legal conclusion that an implied license exists. See Met-Coil Sys. Corp. v. Korners Unltd., Inc., 803 F.2d 684, 687, 231 USPQ 474, 476 (Fed. Cir. 1986) (implied license is question of law). In patent law, an implied license merely signifies a patentee's waiver of the statutory right to exclude others from making, using, or selling the patented invention. Spindelfabrik **Suessen-Schurr Stahlecker & Grill GmbH v. Schubert & Salzer Maschinenfabrik Aktiengesellschaft, 829 F.2d 1075, 1081, 4 USPQ2d 1044, 1048 (Fed. Cir. 1987). In the words of the Supreme Court,**

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[1] Pages A21a-A21c present the full text of that portion of the Federal Circuit's January 3, 1997 opinion which appears at page A21 of the petitioner's appendix. See footnote 1 of respondent's opposition brief. Text omitted from page A21 of petitioner's appendix appears in bold.

> **No formal granting of a license is necessary in order to give it effect. Any language used by the owner of the patent, or any conduct on his part exhibited to another from which that other may properly infer that the owner consents to his use of the patent in making or using it, or selling it, upon which the other acts, constitutes a license and a defense to an action for a tort.**

De Forest Radio Tel. Co. v. United States, 273 U.S. 236, 241 (1927). Since De Forest, this court and others have attempted to identify and isolate various avenues to an implied license. As a result, courts and commentators relate that implied licenses arise by acquiescence, by conduct, by equitable estoppel (estoppel in pais), or by legal estoppel. See AMP, Inc. v. United States, 389 F.2d 448, 452 nn.4-5, 156 USPQ 647, 649 nn.4-5 (Ct. Cl. 1968); Robert L. Harmon, Patents and the Federal Circuit § 6.2(c) (3d ed. 1994 & Supp. 1996); 6 Ernest B. Lipscomb III, Walker on Patents § 20:14-20:17 (3d ed. 1987 & Supp. 1995). These labels describe not different kinds of licenses, but rather different categories of conduct which lead to the same conclusion: an implied license. The label denotes the rationale for reaching the legal result.

One of our predecessor courts observed that "courts generally have first looked for facts which give rise to an estoppel in the process of concluding that there is an

implied license." AMP, 389 F.2d at 452, 156 USPQ at 649. The opinions that hew most closely to the De Forest language and the "entire course of conduct" analysis rely on the doctrine of equitable estoppel, because De Forest requires that conduct of the patentee led the other to act. Bandag, Inc. v. Al Bolser's Tire Stores, Inc., 750 F.2d 903, 925-26, 223 USPQ 982, 998-99 (Fed. Cir. 1984); Stickle v. Heublin, Inc., 716 F.2d 1550, 1559, 219 USPQ 377, 383 (Fed. Cir. 1983). In Bandag we reversed a conclusion of implied license because the infringer failed to show an awareness of the conduct which supposedly created the license. Bandag, 750 F.2d at 925-26, 223 USPQ at 998-99. In Stickle, we affirmed that no implied license existed absent the required nexus between the patentee's conduct and the infringing actions, given that the course of infringing action only began later and distinct from the cited conduct. Stickle, 716 F.2d at 1559, 219 USPQ at 383-84.

Neither this court nor the Supreme Court, however, has required a formal finding of equitable estoppel as a prerequisite to a legal conclusion of implied license. See AMP, 389 F.2d at 453-54, 156 USPQ ... [continued on A22 of petitioner's appendix]